There is no substance in this submission. No rules of the Society have been made to regulate the procedure to be followed during a disciplinary inquiry except rule 13 of the Accountants Rules, 1977 (No. S 99 of May 6, 1977) where it is provided that "all evidence given at the hearing of any matter by the Disciplinary Committee shall be given orally; Provided that the Disciplinary Committee shall also be entitled to obtain sworn affidavits from any person if it considers them necessary for the better investigation of the matter." In our view in the absence of rules the Disciplinary Committee should conduct the inquiry in accordance with the rules of natural justice. One of the requirements of natural justice is that a person must be given adequate notice of the case against him to enable him a fair opportunity of answering it. In the present case the charge contained particulars which clearly met this requirement. It is clear from the evidence of Lou Chi Chung before the Disciplinary Committee that when the appellant applied to the Economic Development Board for a manufacturer's licence on behalf of Yoong Wah Industries (Pte) Ltd., of which Lou Chih Chung was the Chairman, the appellant was acting in his professional capacity.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Lee & Lee.*

THE FIRST NATIONAL BANK OF CHICAGO v. LAM THOO SANG & ORS.

[O.C.J. (Rajah J.) August 28, 1979]
[Singapore — Suit No. 2989 of 1976]

Banking Law — Guarantee — Guarantee to bank to the extent of $1,500,000 — Whether guarantee bad for want of consideration — Bank induced to sign debenture — Sufficient consideration.

The plaintiffs in this case were bankers. They claimed against the four defendants jointly and severally for the sum of $1,455,960.73 with interest under a guarantee of May 2, 1974. In the said guarantee the defendants jointly and severally acknowledged that the debenture dated May 2, 1974 between Alfa Electronics Pte. Ltd. (the company) and the plaintiffs was subscribed for on condition and in part consideration that they would jointly and severally give the guarantee as appearing in the guarantee and accordingly they jointly and severally guaranteed to the plaintiffs, the registered debenture holder the due payment by the company of all principal monies and interest falling under the debenture. The defendants also agreed to pay on demand if and whenever the company made default for more than seven days to the extent of $1,500,000.

On July 26, 1976 the Company was indebted to the plaintiffs in the sum of $1,455,960.73 which sum was due and payable by the Company to the plaintiffs under the debenture. In spite of a written demand from the plaintiffs for the said sum, the defendants failed to pay.

The first defendant admitted the signing of the guarantee but pleaded that the guarantee was "a *nudum pactum* and void" for lack of consideration. The second, third and fourth defendants did not appear.

Held, allowing the plaintiffs' claim: the guarantee and the debenture must be read together. The consideration for the said guarantee was the plaintiffs being induced to sign the debenture.

Case referred to:-

(1) *National Bank of Nigeria Ltd.* v. *Awolesi* [1965] 2 LL. List L.R. 389.

CIVIL SUIT.

Foo Yew Heng for the plaintiffs.

Tay Soo Tee for the defendants.

Cur. Adv. Vult.

Rajah J.: The plaintiffs are bankers. Their claim against the 1st, 2nd, 3rd and 4th defendants jointly and severally was for the sum of $1,455,960.73 with interest thereon at 9½% per annum from July 27, 1976 until payment arising under a guarantee dated May 2, 1974 (guarantee). In the guarantee the defendants jointly and severally acknowledged that the debenture dated May 2, 1974 between Alfa Electronics Private Limited (the company) and the plaintiffs (the debenture) was subscribed for on condition and in part consideration that they would jointly and severally give the guarantee as appearing in the guarantee and accordingly they jointly and severally guaranteed to the plaintiffs, the registered debenture holder the due payment by the company of all principal monies and interest falling due under the debenture and if and whenever the company made default for more than seven (7) days or otherwise provided for under the debenture in the payment of any such principal monies or interest the guarantors shall pay the amount thereof to the plaintiffs on demand to the extent of $1,500,000.

As at July 26, 1976 the company was indebted to the plaintiffs in the sum of $1,455,960.73 which sum was due and payable by the company to the plaintiffs under the debenture. By the plaintiffs' solicitors' letters dated August 4 and 10, 1976 respectively the plaintiffs demanded of each of the defendants payment of the said sum of $1,455,960.73 with interest thereon at 9½% per annum. The defendants and each of them failed to make payment thereof or of any sum at all.

The first defendant although admitting the signing of the guarantee pleaded that the guarantee did not express therein the consideration for his promise and that "for want of consideration appearing on the face of the said guarantee, it stood simply as an engagement to pay the debt of another without any consideration, and was therefore, "a *nudum pactum* and void".

The second, third and fourth defendants did not appear and were not represented.

In essence what the court had to decide in the instant case was whether the guarantee was effective against the first defendant. The argument of counsel was that the guarantee on the face of it disclosed no consideration and therefore the first defendant was absolved from any liability on the said guarantee. He cited the case of *National Bank of Nigeria Ltd.* v. *Awolesi*(1) in support of his case. I do not see how this case supports his contention. In this case the Privy Council held that when the bank allowed its customer (the person guaranteed) to open a No. 2 account there was a substantial variation of the contract of guarantee, in that the bank was allowing the guarantor to be prejudiced as to his guarantee because the customer was thus able to make payment with

the bank without releasing the guarantor from his liability under the guarantee.

My view of the matter is that the guarantee and the debenture must be read together and when this is done it is patently clear that what the guarantors did guarantee under the guarantee was money which was due and owing as of May 2, 1974 and money to be lent thereafter to the total extent of $1,500,000. Consideration for the said guarantee in my view was plaintiff bank being induced to sign the debenture.

Clause 1 of the said debenture states that

"In consideration of the Bank agreeing to grant or continuing to grant the banking facilities to the Company to such an extent and for so long as the Bank may think fit the Company hereby covenants and undertakes that it will on demand pay to the Bank all such sums of money which now or shall from time to come and at any time hereafter be due or owing to the Bank by the Company solely or jointly with any other person or persons and whether as principal or surety or which the company may be or become liable to pay to the Bank anywhere on any account or otherwise or in any manner whatsoever and all other liabilities whether certain or contingent including the balance for the time being owing...."

Under the guarantee the first defendant and the three other defendants thereby jointly and severally acknowledged that the debenture was subscribed for on condition and in part consideration that they would jointly and severally give the guarantee set out therein.

For this reason I allowed the plaintiff's claim with costs.

Claim allowed.

Solicitors: *Rodyk & Davidson; Foo & Quek.*

THE "ASIA STAR"; LAM HUAT LIGHTERAGE CO. v. OWNERS OF FREIGHT AND/OR CARGO ON M.V. "ASIA STAR" AND/OR PROCEEDS OF SALE THEREOF

[O.C.J. (Chua J.) September 11, 1979]

[Singapore — Admiralty in Rem No. 64 of 1975]

Shipping Law — Lighterage — Claim against cargo-owners for lighterage services etc. — "Common carriers" — Meaning of — Hague Rules, Art. III r. 8.

The facts in this case revealed that a vessel, "Asia Star" owned by a company in Taiwan was chartered to P. Corporation of Taiwan. The vessel sailed to Bangkok where it was loaded with a cargo of parboiled rice and textiles. Freight was prepaid and the cargo was to be carried from Bangkok to Jeddah or Hodeidah. The "Asia Star" arrived in Singapore on December 2, 1974. Upon arrival in Singapore, the master of the vessel lodged two marine protests to say that en route to Singapore from Bangkok the vessel had encountered heavy seas and that there had been damage to the vessel and the cargo. It was decided to tranship the cargo to m.v. "Dong Hing" which was to carry it to Jeddah or Hodeidah. On December 23, 1974 *C.S.* were appointed agents and they were requested by letter dated December 23, 1974 to discharge the cargoes on the "Asia Star" on to lighters to be stored pending transhipment to Jeddah and Hodeidah by the "Dong Hing", which was expected to arrive in Singapore on December 25, 1974. *C.S.* then engaged *K.C.* to do the job. *K.C.* in turn engaged the plaintiffs to provide the lighters. The "Dong Hing" never arrived in Singapore and the "Asia Star" slipped out of the Port of Singapore without port clearance.

In another suit, *C.S.* obtained an Order of Court for the sale of the defendants' cargo (parboiled rice). The plaintiffs intervened.

The present action was brought to claim against the defendants for payment of lighterage, towage, stevedoring, slinging stacking and other services performed by the plaintiffs for the defendants at the defendants' request and/or at the request made for and/or on behalf of the defendants as well as for demurrage arising out of the detention of the plaintiffs' lighters.

The plaintiffs claimed that they were common carriers. They also relied on the Bills of Lading which they alleged entitled the carrier to "tranship" to the port of discharge the cargo shipped on board the "Asia Star" by the shippers. The plaintiffs contended that clauses 13 and 14 of the Bills of Lading were applicable. The defendants on the other hand submitted that clause 13 which provided that the forwarding is "at the risk of the shipper, consignee and/or owner of the goods" and clause 14 which provided that in the case of transhipment the vessel or carrier is absolved "from all claims or liabilities of every description" were contrary to the Hague Rules and were void as they relieved the carrier or the ship from liability for loss or damage to the goods.

One of the defendants, *S.*, counterclaimed against the plaintiffs for damages. *S.* claimed that the plaintiffs wrongfully and without legal justification claimed a lien over his rice for their charges and refused to allow him to take delivery until their claim was paid. During the period of wrongful detention, there was a fall in the market price of rice and he suffered a loss. He also alleged that the condition of his rice deteriorated as a consequence of the long period in which it was kept in the plaintiffs' lighters; that the said deterioration would not have occurred if his rice had been released for shipment or discharged into a godown away from the damp.

Held, allowing the plaintiffs' claim: (1) to make a man a common carrier he must carry the goods as a public employment; he must carry for all indifferently; he must hold himself out as ready to carry for reward so long as he has room; he must hold himself out as ready to carry for hire, at a reasonable rate, as a business and not as a casual occupation for a particular occasion. A man may be a common carrier without so styling himself. The question is not determined by a man's description of his own business, although it may be inferred from its character that he is a common carrier; the plaintiffs in this case were common carriers and had proved their claim;

(2) Article III of the Hague Rules is an article providing that the carrier must exercise due diligence in certain respects. Clauses 13 and 14 of the Bills of Lading did not infringe the said article as they were merely terms of the contract under which the shippers agreed that the master should be their agent in doing various things and such terms could not be a lessening of the carrier's liability;

(3) there was no merit in the counterclaim. The defendant *S.* had acted unreasonably by delaying to take delivery of the rice. The plaintiffs, instead, had taken all reasonable means to preserve the rice in the lighters.

ADMIRALTY *IN REM*.

H.E. Cashin for the plaintiffs.

C.H. Smith (*S.Q. Ong* with him) for owners of cargo J2, J3, J4 and J5 — Sharbatly.

Miss Lai Siu Chiu for cargo owner J1.

W.E. Jansen for cargo owner J6 and J7.

Lee Kim Siang for cargo owner H1-H6.

Cur. Adv. Vult.

Chua J.: The plaintiffs in this case claim against "The Owners of the Freight and/or Cargo lately laden on the m.v. "Asia Star" and/or the proceeds of sale thereof" and their claim is "for lighterage, towage, stevedoring, slinging stacking and other services per-